

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 321 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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JAY MITRA CO OP HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

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Appearance:

MR AJ PATEL for Petitioner

MR TH SOMPURA, AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/07/98

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the order dated 31.5.1990 (Annexure "E") passed by the Competent Authority & Deputy Collector, ULC, Ahmedabad, the order dated 29.2.1992 (Annexure "F") passed by the Urban Land Tribunal in Appeal No. (Ahmedabad) 131 of 1990 and the Order dated 17.12.1997 (Annexure "G") passed by the Urban Land Tribunal in Appeal No. (Ahmedabad) 7 of 1997.

2. The short facts giving rise to filing of the petition, as averred by the petitioner, are as under :-

In respect of land admeasuring 9780 sq.yds. of Survey No. 297 of village Vinzol in Ahmedabad Urban Agglomeration, the original holder and the intending purchaser i.e. the petitioner-society submitted an application to the State Government for exemption of the land in question from the applicability of Chapter III of the ULC Act under Section 20 of the Act. By order dated 14.6.1979 (Annexure "B"), the State Government granted permission to the holder-Jashbhai Narsinhbhai Patel to sell the land to the petitioner-society for the purpose of constructing residential units for the members of the petitioner-society on the basis of the agreement to sell dated 11.5.1974. One of the conditions of the said exemption order dated 14.6.1979 was that the holder shall execute a sale deed in favour of the petitioner-society within nine months and another important condition was that the petitioner-society was to complete the construction of the residential units within two years, failing which for the open lands the exemption shall be treated as having automatically lapsed. It was further provided that in case of breach of any condition, the exemption shall be withdrawn under the provisions of Section 20(2) of the Act without paying any compensation for the construction which might have been put up on the land in question.

Pursuant to the aforesaid exemption, the holder sold the land to the petitioner-society as per the registered sale deed dated 14.3.1980. However, the petitioner-society could not comply with the condition requiring construction of the residential units within the stipulated period of two years and the petitioner-society submitted various applications to the Competent Authority on 18.2.1982, 2.6.1982, 3.7.1982, 10.9.1982 and 10.10.1982 (Annexure "C" colly.) pointing out the difficulties which the petitioner-society had undergone in obtaining cement and also in getting approval of the plans and other necessary permissions under the relevant and applicable statutes. The petitioner had pointed out from time to time that the petitioner-society had dug up the land and done the concrete for the foundation and that three lac bricks were also purchased, water bore was also done and the applications were also made to the Electricity Company for supplying electricity. The petitioners also pointed out that there was difficulty in getting permission for conversion of the new tenure land into old tenure land which application was pending since July, 1979. It was ultimately pointed out to the Government in October, 1982 that the petitioner-society had already commenced

construction upon new tenure land and that the society intended to construct 37 row house and 21 tenements. Since one of the conditions of the exemption order was that the petitioner was required to complete construction within two years' time and that period was to expire in March, 1982, the petitioner-society had applied to the State Government for extension of time through the aforesaid applications made from time to time. However, by order dated 4.10.1982, the State Government rejected the application for extension of time limit as the society had not commenced construction. The aforesaid letter dated 4.10.1982 further stated that since the society was not registered before 17.2.1976 the application for extension was liable to be rejected. The said communication was sent to the petitioner-society.

In the meantime, the petitioner-society filed Special Civil Application No. 2972 of 1983 for challenging the order dated 8.11.1982 passed by the Collector determining the amount of premium for conversion of new tenure land into old tenure land. That petition was partly allowed and the order of the Collector was set aside. That petition ultimately came to be disposed of on 1.2.1996.

In the meantime, the Competent Authority processed the form of the original holder and by order dated 18.5.1990, the Competent Authority passed an order declaring the surplus land held by the original holder. In that order, the land in question bearing survey No. 297 was also included. The original holder's contention was that since a part of the land in Survey No. 297 admeasuring 8177 sq.mtrs. was sold by the holder to the present petitioner, the same was not required to be included in the holding of the original owner. However, the Competent Authority rejected that contention on the ground that the exemption, pursuant to which the land was transferred to the petitioner-society, had lapsed in view of non-compliance with the condition for construction of the residential units within two years and the request made by the petitioner-society for extending the time limit was rejected by the Government on 4.10.1982. The Competent Authority further observed that 18208 sq.mtrs. of land in survey No. 297 of village Vinzol was waste land and no agricultural operations were being carried on nor was any extension/exemption obtained by the holder and, therefore, the entire land in survey No. 297 of village Vinzol was included in the holding in the name of the original owner of the land. That order of the Competent Authority at Annexure "E" to the petition was challenged by the original holder. However his appeal

(No. 131/90) came to be rejected by the Urban Land Tribunal on the ground that the original holder had not produced the exemption order and that in the revenue record the land was shown as surplus land during the period from 1975-76 to 1983-84. That appeal was rejected on 29.2.1992 by order at Annexure "F".

Thereafter, the present petitioner filed Appeal No. 7 of 1997 before the Urban Land Tribunal challenging the aforesaid order of the Competent Authority at Annexure "E" to the petition. The Tribunal rejected the appeal on the ground that since the condition requiring the petitioner-society to complete construction of the residential units within two years was violated and the petitioner's application for extension of time limit was rejected by the State Government on 4.10.1982, the petitioner's appeal was required to be rejected. The Tribunal further relied on the fact that the appeal filed by the original holder was already dismissed and, therefore, also the appeal filed by the petitioner-society could not be entertained. On the question of locus standi, the Tribunal held that the petitioner had no right to prefer appeal as the petitioner-society was not a party to the proceedings before the Competent Authority.

The aforesaid orders of the Urban Land Tribunal, confirming the order of the Competent Authority are challenged in the present petition.

3. At the hearing of the petition, the learned counsel for the petitioner has submitted that the petitioner had the locus standi to challenge the order of the Competent Authority, as on the basis of the exemption dated 14.6.1979 granted in favour of the original holder enabling him to transfer the land in question to the petitioner-society, the land was sold to the petitioner-society by a registered sale deed executed on 14.3.1980. Hence, revocation of the exemption order with the further consequence of cancellation of the transfer in favour of the petitioner is bound to cause severe prejudice to the petitioner-society which had already become a lawful owner of the land way back in 1980.

Secondly, it is urged that the construction could not be completed within two years on account of the circumstances beyond the control of the petitioner-society as the society could not get cement which was a controlled commodity at that time and the electricity supply was also not received by the petitioner-society. It is further submitted that by year

1985-86, the Society had completed the construction of the dwelling units and 37 row houses and 21 tenements are being occupied by the respective allottees since 1985-86. Hence, the Competent Authority and the Tribunal ought not to have treated the exemption as having been withdrawn.

Lastly, it is vehemently urged by Mr Patel for the petitioner that once exemption is granted under Section 20(1) of the Act, so called breach of one of the conditions cannot result into automatic cancellation or revocation of the exemption unless the procedure under Section 20(2) is followed by the authority.

4. In reply, Mr Sompura, learned AGP has submitted that the petitioner-society was purchaser of the land in question but not the original holder on 21.2.1976 and, therefore, the petitioner has no locus standi to challenge the orders passed by the Competent Authority or the State Government treating the exemption having been revoked and that only the original holder can challenge the said orders of the authorities. It is further submitted that in view of the fact that the petitioner-society has not challenged the order dated 4.10.1982 rejecting the application for extension of time limit, the said order should be treated to have also withdrawn the exemption which was granted on 14.6.1979.

It is further submitted that in any view of the matter, there is a gross delay of 15 years in challenging the action of the State Government in not granting the extension and, therefore, also the petition deserves to be dismissed.

5. Having heard the learned counsel for the parties, it is not possible to accept the preliminary contention of Mr Sompura that the petitioner has no locus standi to challenge the orders of the authorities. Pursuant to the exemption dated 14.6.1979, the petitioner-society purchased the land in question on 14.3.1980. If the authorities treat the exemption as having been revoked or as having lapsed, it would have severe adverse consequence on the petitioner-society's right to hold the land in question. The petitioner-society is, therefore, certainly entitled to challenge such orders of the respondent-authorities. The petitioner-society was not merely an intending purchaser when it started challenging the order in question. The petitioner-society had a full fledged vested right in the land in question and, therefore, it has locus standi to challenge the orders.

6. As far as the contention of Mr Sompura that the

order dated 4.10.1982 has never been challenged by the petitioner-society, Mr Patel is justified in contending that the order dated 4.10.1982 could have been followed by the proceedings under Section 20(2) of the Act, but since the respondent did not initiate such proceedings under Section 20(2), the exemption continued to operate and, therefore, there was no need for the petitioner-society to challenge the communication dated 4.10.1982. As far as the contention of Mr Sompura that there is a gross delay of 15 years, since the authorities have not withdrawn the exemption, the question of delay did not arise until the year 1990 when the Competent Authority for the first time included the land in question in the holding of the original owner. However, prior thereto the petitioner-society had already completed construction of the row houses and the tenements and Mr Patel has shown some of the electricity bills for the residential units in the petitioner-society which documents were also produced by the petitioners in the earlier petition being Special Civil Application No. 2972 of 1983. It is, therefore, clear that the members of the petitioner-society had started occupying the residential units in question before the Competent Authority had passed the impugned order in the year 1990. Before the Competent Authority, the original owner was obviously not interested in bringing the relevant material to the notice of the Competent Authority and he had merely pointed out the necessary fact that pursuant to the exemption order dated 14.6.1979 the land was sold to the petitioner-society. When that fact was brought to the notice of the Competent Authority, the Competent Authority ought to have issued notice to the petitioner-society. The impugned orders are, therefore, also required to be quashed.

7. However, since there was a breach of condition which was a part of the exemption order granted under Section 20(1) of the Act (but not under Section 21(1) of the Act) and in view of the fact that the petitioner-society did not care to get necessary entries in the revenue record regarding the construction which had been put up, which has resulted into the unnecessary proceedings involving waste of public time and energy and having regard to the decision of this Court in the case of Shamjibhai Bhanjibhai Patel vs. Competent Authority, ULC, Surat & Anr., 36(1) GLR 742 and in view of the fact that there is no other allegation about breach of any condition other than the condition requiring completion of construction within two years, it would be just and proper to impose a penalty of Rs. 1000/- (One thousand only) per each residential unit. The amount of penalty

shall be paid by the petitioner-Society to respondent No. 2-Competent Authority by 30.9.1998. Failure to pay the aforesaid amount in respect of any of the residential units in the petitioner-society would result into dismissal of this petition and restoration of the impugned orders at Annexures "E", "F" and "G" to the petition.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

July 28, 1988 (M.S. Shah, J.)